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UNITED STATES DISTRICT COURT

DISTRICT OF OREGON

PORTLAND DIVISION

UNITED STATES OF AMERICA,

CR 08-405-KI

v.

**GOVERNMENT'S SENTENCING
MEMORANDUM**

WINDY N. HARVEY,

Sentencing Hearing: December 21, 2011
1:30 p.m.

Defendant.

The United States of America, through S. Amanda Marshall, United States Attorney for the District of Oregon, and Scott M. Kerin and Craig J. Gabriel, Assistant United States Attorneys, hereby submits the following sentencing memorandum for the Court's review.

On August 29, 2011, defendant pled guilty to a single-count Superseding Information, charging Voluntary Manslaughter. Pursuant to the plea agreement, at the conclusion of the sentencing hearing, the government will dismiss all remaining counts against defendant.

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I. FACTUAL BACKGROUND

On August 15, 2008, defendant unlawfully shot and killed Warren Wallulatum, Jr., on the Warm Springs Indian Reservation. The Presentence Investigation Report at paragraphs 7 - 15 accurately summarizes the defendant's offense conduct in this case.

II. GUIDELINE CALCULATION

The parties agree with the United States Probation Office's calculation of the advisory guideline range. Under USSG § 2A1.3, defendant's Base Offense Level is 29. After deducting 3 levels for Acceptance of Responsibility, defendant's Total Offense Level is 26. Defendant is in Criminal History Category I, which yields an advisory guideline range of 63-78 months' imprisonment.

III. SENTENCING RECOMMENDATION

Pursuant to the plea agreement under Rule 11(c)(1)(C), the government recommends a sentence of 120 months in prison, to be followed by a 3-year term of supervised release. Such a sentence constitutes an upward variance from the advisory guideline range for Voluntary Manslaughter, but the sentence is significantly below the guideline range and mandatory minimum sentences defendant would have faced had he been convicted of Murder in the Second Degree and firearms offenses.

As the Court is aware from pretrial litigation, the victim in this case had an extensive history of violence and gang activity in Warm Springs. But, as defendant's guilty plea in this case demonstrates, defendant was not justified in taking the victim's life. A substantial prison sentence is therefore appropriate.

The government believes that a 120-month prison sentence is sufficient, but not greater than necessary, to comply with the factors set forth in 18 U.S.C. § 3553(a).

IV. CONCLUSION

The government respectfully recommends a sentence of 120 months' imprisonment, followed by a 3-year term of supervised release with the conditions set forth in the Presentence Investigation Report.

DATED this 16th day of December, 2011.

Respectfully submitted,

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